

MAR 31 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NOEL ESTUARDO TUCHEZ-
ORDONEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-74508

Agency No. A096-385-801

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2009^{**}

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Noel Estuardo Tuche-Ordonez, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's ("IJ") decision denying his application for

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

withholding of removal and protection under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence, *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and we dismiss in part and deny in part the petition for review.

We lack jurisdiction to consider Tuche-Ordonez’s contention that he established eligibility for asylum because he withdrew his application for asylum as untimely and, therefore, did not exhaust this issue before the agency. *See* 8 U.S.C. § 1252(d)(1); *see also Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

Substantial evidence supports the IJ’s adverse credibility determination because Tuche-Ordonez’s asylum application omitted any reference to police participation in the 1997 incidents, and the police’s participation was more than a detail, it formed the basis of Tuche-Ordonez’s claim of persecution on account of a protected ground. *See Li*, 378 F.3d at 962. Accordingly, Tuche-Ordonez’s withholding of removal claim fails.

Because Tuche-Ordonez’s CAT claim is based on the same testimony the IJ found not to be credible, and Tuche-Ordonez points to no other evidence the IJ should have considered, he has failed to establish that the record compels a finding

of eligibility for CAT relief. *See Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003).

Tuchez-Ordonez's contention that the BIA violated due process by streamlining his case is foreclosed by *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 848 (9th Cir. 2003).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.